

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

CARMEN BOGGS-BASKERVILLE,)	
)	
Employee/Grievant,)	DOCKET No. 13-10-596
v.)	
)	DECISION AND ORDER
DEPARTMENT OF SERVICES FOR)	
CHILDREN, YOUTH AND)	
THEIR FAMILIES/DIVISION OF)	
YOUTH REHABILITATIVE SERVICES,)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on March 19, 2015 in the Delaware Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Paul R. Houck, Victoria Cairns, and Jacqueline Jenkins, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Rae M. Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Gary Aber, Esquire
on behalf of employee/grievant
Carmen Boggs-Baskerville

Kevin Slattery
Deputy Attorney General
on behalf of the Department of
Services for Children, Youth and
Their Families

BRIEF PROCEDURAL SUMMARY

Employee/grievant, Carmen Boggs-Baskerville (“Boggs-Baskerville”) initially filed an appeal to the Merit Employee Relations Board (“Board”) on October 7, 2013. Boggs-Baskerville asserted she had been improperly terminated by the Department of Services for Children, Youth and Their Families, Division of Youth Rehabilitative Services (“YRS”) on September 18, 2013, from her position as a Youth Rehabilitation Program Manager at Ferris School¹ in violation of Merit Rule 12.1.²

A hearing was convened by a quorum of the Board on April 3, 2014, during which evidence was received and the arguments of the parties were heard. The Board issued its decision on April 16, 2014, in which it concluded as a matter of law, “... that YRS did not have just cause to terminate the grievant.” The Board ordered YRS to take the following actions:

...[B]y a unanimous vote of 4-0, the Decision and Order of the Board [is] to grant the grievant’s appeal. As a remedy the Board orders YRS to reinstate the grievant as of September 18, 2013, but to demote her from Youth Rehabilitative Program Manager to Treatment Specialist, paygrade 11, effective September 18, 2013. The Board suspends the grievant without pay for the period September 18, 2013 to December 31, 2013.

In calculating back pay from January 1, 2014 to the date of payment, the grievant should receive either the top of the range of salary for paygrade 11, or 15% less than her former salary, whichever is higher. The agency should deduct from the amount of back pay any wages or benefits from employment the grievant received during that time, including unemployment compensation.

The agency’s counsel is to report back to the Board in writing within thirty calendar days of the date of this Order regarding the agency’s compliance with this Order.

It is undisputed that Boggs-Baskerville was reinstated, placed in the position of Youth Rehabilitation Treatment Specialist, and received back pay for the period of January 1, 2014

¹ Ferris School is a maximum security and rehabilitation facility for juvenile offenders.

² Merit Rule 12.1: Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. “Just cause” means that management has a sufficient reason for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

through the date she returned to work in her new position.

Boggs-Baskerville filed a Motion to Reopen the Original Hearing on November 7, 2014, to which were appended five exhibits. The Agency filed a response to the Motion and appended five exhibits to its submission.

The Board heard legal argument from the parties pursuant to the Motion by the Employee/Grievant Carmen Boggs-Baskerville (“Boggs-Baskerville”) on March 19, 2015.

FINDINGS OF FACT

YRS initially terminated Boggs-Baskerville due to her suspension of Delaware Criminal Justice Information System (“DELJIS”) access privileges based on her receipt of a criminal citation in Pennsylvania for retail theft. Boggs-Baskerville’s Youth Rehabilitative Program Manager position required DELJIS access, as did the Youth Rehabilitation Treatment Specialist position to which she was reinstated. At the time of the Board’s April 16, 2014 decision, Boggs-Baskerville’s DELJIS access was suspended. In a footnote in its decision, the Board concluded there was no way of knowing if DELJIS would permanently revoke her access privileges.

On July 24, 2014, Boggs-Baskerville went before the DELJIS Board to appeal her suspension of privileges. The DELJIS Board voted to permanently revoke Boggs-Baskerville’s direct and indirect access to the criminal justice information system. Subsequently, by letter dated September 2, 2014, YRS recommended termination from her employment as a Youth Rehabilitation Treatment Specialist, based on the DELJIS Board’s decision. She was officially terminated on October 17, 2014.

By correspondence dated July 30, 2014, Boggs-Baskerville contacted Alison McGonigal, (YRS Deputy Director) to request a transfer to another position that did not require DELJIS

access. YRS notified Boggs-Baskerville there were no appropriate, available vacancies at that time. Boggs-Baskerville continued to apply for positions both within and outside of her Department and claims YRS and the Department failed to place her in another position, without explanation.

CONCLUSIONS OF LAW

The Board concludes as a matter of law that YRS complied with its final and binding Order of April 16, 2014.

Boggs-Baskerville requests the Board re-open the hearing conducted on April 3, 2014 for the purpose of considering whether YRS has failed to comply with the “spirit” of the Board’s April 16, 2014 Order by refusing to either transfer or demote her (after her second termination from the position of Youth Rehabilitation Treatment Specialist because her DELJIS access was permanently revoked) into the first open and available position which did not require DELJIS access for which she is qualified and/or for which she applied.

“Although the Board’s [Merit Employee Relations Board] Rules of Procedure do not provide for motions for reargument, the Court assumes, without deciding, that the Board has implicit authority to hear a motion for reargument. A motion for reargument before the Board is analogous to a motion for reargument pursuant to Superior Court Rule of Civil Procedure 59(e).” *Family Court of the State of Delaware v. Reeves*, 1997 WL 819137 (Del. Super. Nov. 21, 1997). “A Motion for Reargument, under Superior Court Civil Rule 59(e), will be denied unless the Court has overlooked a precedent or legal principle that would have controlling effect, or misapprehended the law or facts such as would affect the outcome of the decision. A motion for reargument is not intended to rehash arguments already decided by the Court, or to present

new arguments not previously raised.” *Bilski v. Bd. of Medical Licensure and Discipline of the State of DE*, 2014 WL 5282115 (Del. Super. October 16, 2014).

All of the facts Boggs-Baskerville cites in support of her Motion concern events and circumstances which occurred after the Board issued its April 16, 2014, decision and she was reinstated to the Youth Rehabilitation Treatment Specialist position. It is not alleged that the Board failed to consider precedent, law or facts which were or could have been presented prior to its April 3, 2014 hearing. Consequently, there is no justiciable issue properly before the Board and there is no support for the motion to reopen the hearing, as requested.

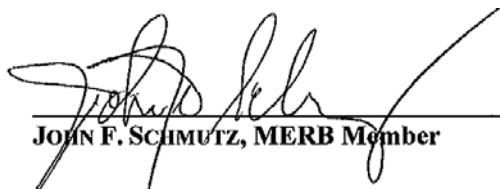
Boggs-Baskerville was not precluded from contesting her termination from the Youth Rehabilitation Treatment Specialist position. She could have filed a grievance as she did when she successfully contested her initial termination in October, 2013. The second termination was separate and distinct from the initial termination and that grievance would have been considered in light of all of the circumstances and events which occurred since the Board’s decision on April 16, 2014.

ORDER

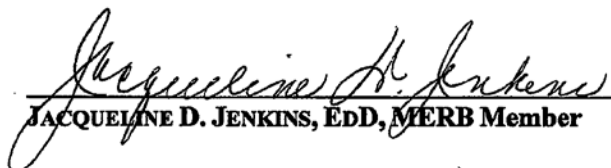
It is this **1st** day of **May**, 2015, by a unanimous vote of 5-0, the Decision and Order of the Board to deny Grievant’s Motion to Re-Open/Reargue. The Board finds YRS complied with all requirements of its previous decision dated April 16, 2014 and any subsequent issues concerning available jobs for Boggs-Baskerville falls outside the jurisdiction of this Board.



MARTHA K. AUSTIN, MERB Chairwoman



JOHN F. SCHMUTZ, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


PAUL R. HOUCK, MERB Member


VICTORIA D. CAIRNS, MERB Member

APPEAL RIGHTS

29 *Del. C.* §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 *Del. C.* §10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing date: May 1, 2015

Distribution:

Original: File

Copies: Grievant
Agency's Representative
Board Counsel
MERB website